

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 299 of 1981

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SONI SHANTILAL CHHAGANLAL

Versus

KANSARA HARIDAS RAMJI

Appearance:

MR JR NANAVATI for Petitioner
MR SURESH M SHAH for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/10/2000

ORAL JUDGEMENT

This appeal arises of the judgment and order dated 13th April, 1981, passed by the learned District Judge, Jamnagar, in Regular Civil Appeal No. 3/81, arising of the judgment and order dated 31st July, 1980,

passed by the learned Joint Civil Judge (JD) Jamnagar, in Regular Civil Suit No. 344/74. The appellant before this court is the plaintiff.

The plaintiff is the tenant of the first floor of the building named as "Keshav Kutir" situated in Jamnagar. The defendant is also a tenant in the said building of the ground floor. The defendant is also the Administrator on behalf of the landlord Keshavlal Trikamji Bhagat. The plaintiff had taken the upper storey on rent from the defendant Haridas Ramjibhai, for which a rent note was executed on 17th July, 1958. The plaintiff alleged that the entire first floor of the building consisting of a room, kitchen, Osri etc. along with the terrace above it was taken on rent by the plaintiff and the defendant who was the occupant of the ground floor of the building had no right to use the terrace. However, he had started to use the terrace, to which the only access was through the Osri in occupation of the plaintiff, whereby the defendant caused disturbance to the occupation of the first floor by the plaintiff. The plaintiff, therefore, filed Regular Civil Suit No. 344/74 in the court of the learned Joint Civil Judge (JD) Jamnagar, and prayed for permanent injunction restraining the defendant from entering or using the suit terrace. The suit was dismissed on 31st July, 1980. Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No. 3/81, which too was dismissed on 12th January, 1981. Therefore, the present appeal.

The following question of law has been framed for consideration by this court :

1. Whether in the facts and circumstances of the case, the respondent-defendant has a right to use or occupy the terrace on construction of the rent note exh. 33, dated 26th December 1958 executed by the plaintiff appellant in favour of the landlord ?

The entire dispute revolves around the rent note Ex. 33. Whether under the said rent note, the plaintiff was given an exclusive right to use and enjoyment of the terrace or whether right to use the same was retained by the defendant and whether the right to use of the suit terrace referred to in the rent note was in favour of the defendant or in favour of the landlord Keshavlal Trikamji

Bhagat.

The rent note has been executed by the plaintiff in favour of Kansara Haridas Ramjibhai i.e. the defendant as an Administrator of the property of Keshavlal Trikamji Bhagat. The rent note refers to the first floor of the suit building consisting of a room, kitchen, Osri and the terrace above the same. However, towards the end, a condition has been stated (translated into English) " You have a right to use the terrace over the premises and I shall not restrain you from enjoying the same ". As recorded hereinabove, the rent note has been made in favour of the defendant i.e. Kansara Haridas Ramjibhai. It, therefore, can not be read to mean that right to enjoy the suit terrace was reserved to the landlord Keshavlal Trikamji Bhagat, who admittedly, did not reside in the said building or even in the town. In my view, therefore, both the courts below are right in holding that the defendant had a right to use and enjoy the suit terrace.

In view of the above discussion, the appeal is dismissed with costs.

(MS R.M.DOSHIT J)

JOSHI